

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
c. C-36, as amended)

N°: 450-11-000167-134

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

MONTREAL, MAINE & ATLANTIC CANADA CO.
(MONTREAL, MAINE & ATLANTIQUE CANADA
CIE)

Debtor Company-Respondent

and

RICHTER ADVISORY GROUP INC. (RICHTER
GROUPE CONSEIL INC.)

Monitor

and

YANNICK GAGNÉ, GUY OUELLET, SERGE
JACQUES and LOUIS-SERGES PARENT

Petitioners

**MOTION FOR AN ORDER APPOINTING THE PETITIONERS AS REPRESENTATIVES OF
THE CLASS DESCRIBED IN APPENDIX "A" HERETO**
(Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"))

TO THE HONORABLE MR. JUSTICE GAETAN DUMAS, J.S.C., SITTING IN THE
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF SAINT-FRANÇOIS,
THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. The Petitioners, Yannick Gagné, Guy Ouellet, Serge Jacques and Louis-Serges Parent (hereinafter referred to as the "**Class Action Petitioners**") hereby request that this Honourable Court exercise its discretion under the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (hereinafter the "**CCAA**") to appoint them to represent, in these proceedings, those persons described in Appendix A hereto as well as below in paragraph 3 (the "**Class**" or "**Class Members**") having

claims against the Debtor Company-Respondent as a result of the losses suffered by them in consequence of the tragic train derailment that took place on July 6, 2013 in Lac-Mégantic, Québec (the “**Train Derailment**”);

II. THE SITUATION OF CLAIMS OF THE CLASS ACTION PETITIONERS IN THE MMA CANADA CCAA PROCEEDINGS

2. On or about July 15, 2013, the Class Action Petitioners filed a Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative pursuant to ss. 1002 and following of the *Code of Civil Procedure of Quebec*, R.S.Q., c. C-25 (the “**C.C.P**”). Thereafter, the Motion to Authorize was amended on July 18, 2013, again on August 16, 2013 and most recently, on November 1, 2013 (the “**Motion to Authorize**”), the whole as appears more fully from a copy of the Third Amended Motion to Authorize, produced herein as **Exhibit R-1**;
3. The Class Action Petitioners wish to institute a class action on behalf of the following group (also described in Appendix A hereto), of which they are members:

“all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the “**Train Derailment**”), or any other group to be determined by the Court”;
4. This class of individuals and persons includes several thousand residents of Lac-Mégantic and includes, but is certainly not limited to, those class members who assert a claim as a result of the tragic and wrongful deaths of their family members and loved ones who died in the fires and explosions caused by the Train Derailment;
5. Under the C.C.P., all Class Members in proposed class action proceedings in Québec have their claims protected once the class action is filed, subject to the terms of the court’s authorization. Currently, these class proceedings include the claims of all Class Members who may have commenced separate legal proceedings in Québec or in another jurisdiction and their claims continue to be protected by the Québec class proceeding unless and until any class member exercises his or her right to opt out once the Québec class proceeding is authorized by the Superior Court. Thus, the class proceeding commenced on July 15, 2013 serves to protect the claims of all Class Members;
6. The Québec class proceeding is presided over by the Honourable Mr. Justice Martin Bureau, J.S.C. in the judicial district of Mégantic (temporarily, hearings are being heard in Sherbrooke). The date for the authorization hearing has not yet

been set, but is currently anticipated to take place in or about June of 2014. The date for the authorization hearing could change depending upon any exigent circumstances;

7. All the Class Members have suffered direct financial loss as a result of the Train Derailment and have claims against numerous Respondents, including Montreal, Maine and Atlantic Canada Co. (“MMA Canada”) which is subject to these CCAA proceedings. However, unlike the various other major stakeholders in the CCAA proceedings, the Class Members are not yet represented by counsel to protect their distinct and unique interests and to protect their rights as significant claimants against not only the estate of MMA Canada and in relation to the proceeds of the applicable policies of insurance held by MMA Canada as a condition of its ability to operate a railroad within the province of Québec, but also as against MMA Canada’s officers and directors, its parent companies and other third party defendants to the Quebec class proceeding such as CP Rail and World Fuel Services Inc. who may seek to be released as part of a plan of compromise and arrangement presented in the course of these proceedings;
8. The other major claimants in the CCAA process, including the province of Québec, the city of Lac-Mégantic, the United States actions for injuries and losses and the major commercial stakeholder claimants – Canadian Pacific Railway, World Fuel Services (whose petroleum products were destroyed,) Irving Oil (whose oil delivery was interrupted) are all represented by counsel at the CCAA process, as are other creditors of MMA Canada. However, the actual residents of Lac-Mégantic, who suffered some of the most egregious losses, are currently not represented in the CCAA proceedings. This Motion seeks a representation order on behalf of all Class Members in order to ensure that they have a voice equal to that of other major stakeholders and that their interests are protected both with respect to the process of the CCAA proceedings and with respect to any claims administration which might occur;
9. It is essential that the Class Members have a collective voice with respect to negotiation with other stakeholders regarding the process of the CCAA proceedings, the claims administration process, and most importantly, with respect to any plan of arrangement, including, among other things, the order of priority of claims and the treatment of proceeds of the insurance policy with XL Insurance Company Limited and XL Group PLC (“XL Insurance”), MMA Canada’s third-party liability insurer, and the financial contributions required to be made by third parties as a condition of receiving any releases under the Plan;

III. THE CLAIMS OF CLASS MEMBERS

10. Thousands of Class Members were directly affected by the Train Derailment and subsequent fires and explosions. Dozens of buildings owned and/or leased by Class Members were destroyed in the downtown “red zone” and a large number of residents lost their houses. Approximately 2000 residents were evacuated and remained displaced for weeks. Many have never returned to their premises. Approximately 3000 people suffered other physical injuries;

11. Each member of the Class is justified in claiming at least one or more of the following as damages:

(a) For physical injury or death, the individuals or their estates may claim compensation at least one or more of the following non-exhaustive list of damages, namely:

- i. pain and suffering, including physical injury, nervous shock or mental distress;
- ii. loss of enjoyment of life;
- iii. past and future lost income;
- iv. past and future health expenses which are not covered by Medicare;
- v. property damages; and/or
- vi. any other pecuniary losses;

(b) Those individuals who did not suffer physical injury may claim compensation for one or more of the following non-exhaustive list of damages, namely:

- i. mental distress;
- ii. incurred expenses;
- iii. lost income;
- iv. expenses incurred for preventative health care measures which are covered by Medicare;
- v. inconvenience;
- vi. loss of real or personal property;
- vii. property damages causing replacement and/or repairs;
- viii. diminished value of real property; and/or
- ix. any other pecuniary losses;

(c) Family members of those that died or were physically injured may claim compensation for one or more of the following non-exhaustive list of damages, namely:

- i. expenses reasonably incurred for the benefit of the person who was injured or who has died;
- ii. funeral expenses incurred;

- iii. travel expenses incurred in visiting the injured person during his or her treatment or recovery;
 - iv. loss of income or for the value of services where, as a result of the injury, the family member provides nursing, housekeeping or other services for the injured person; and
 - v. an amount to compensate for the loss of guidance, care and companionship that the family member might reasonably have expected to receive from the person if the injury or death had not occurred; and/or
 - vi. any other pecuniary loss;
- (d) Businesses owning or leasing property and/or operating in Lac-Mégantic may claim compensation one or more of the following non-exhaustive list of damages, namely:
- i. loss of real or personal property;
 - ii. property damages causing replacement or and repairs;
 - iii. loss of income, earnings, or profits;
 - iv. diminished value of real property; and/or
 - v. any other pecuniary loss;
12. All of these damages to the Class Members are a direct and proximate result of the Respondent's faults and/or negligence (in addition to other parties as elaborated upon in the Motion to Authorize);

IV. THE PROPOSED CLASS ACTION

13. As a result of the damages suffered in consequence of the Train Derailment, the Class Action Petitioners have brought the Motion to Authorize as against:
- (a) the Debtor Company-Respondent;
 - (b) certain of the Debtor Company-Respondent's current directors and/or officers (namely, Edward Burkhardt, Robert Grindrod, Gainor Ryan, Donald Gardner, Jr., Joe McGonigle, Cathy Aldana, and Thomas Harding (together the "D&Os");
 - (c) various companies affiliated with the Debtor Company-Respondent (namely, Rail World, Inc., Rail World Holdings, LLC, Montreal Maine & Atlantic Railway Ltd., Earlston Associates L.P., Pea Vine Corporation, Montreal, Maine & Atlantic Corporation, XL Insurance Company Limited, and XL Group PLC); and

- (d) other third parties, including Irving Oil Limited, Irving Oil Company, Limited, Irving Oil Operations General Partner Limited, Irving Oil Operations Limited, Irving Oil Commercial G.P., World Fuel Services Corp., World Fuel Services, Inc., World Fuel Services Canada, Inc., Dakota Plains Holdings, Inc., Dakota Plains Marketing, LLC, DPTS Marketing LLC, Dakota Plains Transloading LLC, Dakota Petroleum Transport Solutions, LLC, Western Petroleum Company, Petroleum Transport Solutions, LLC, Strobel Starostka Transfer LLC, Marathon Oil Corporation, Slawson Exploration Company Inc., Union Tank Car Company, Trinity Industries, Inc., Trinity Rail Group, LLC, Trinity Rail Leasing 2012 LLC, General Electric Railcar Services Corporation, and Canadian Pacific Railway Company;
- 14. The Class Members have had their lives and communities destroyed by the Train Derailment. The city and business centre of Lac-Mégantic was destroyed by the Train Derailment and members of the community lost their lives or a loved one, had to be evacuated from their homes and/or suffered significant property damage;
- 15. The Class Members have a significant interest in the Debtor Company-Respondent's assets in order to satisfy their claims, as well as in their claims against the directors and officers of the Debtor-Company, the affiliates of the Debtor Company, and the other third parties described above. However, in general, these Class Members do not have the legal experience necessary to navigate through complex commercial and legal matters, including cross-border CCAA proceedings;

V. THE PRESENT PROCEEDINGS

- 16. On or about August 8, 2013, the Debtor Company-Respondent sought and obtained an order from this Honourable Court granting it protection from its creditors pursuant to the CCAA (the "Initial Order");
- 17. As part of the Initial Order, this Honourable Court stayed proceedings against the Debtor Company-Respondent, including the Motion for Authorization;
- 18. On or about the same day, the Debtor Company-Respondents' U.S. parent company, Montreal Maine & Atlantic Railway, Ltd., commenced proceedings in the U.S. pursuant to Chapter 11 of the U.S. Bankruptcy Code;
- 19. At paragraph 37 of its Amended Petition for the Issuance of an Initial Order, the Debtor Company-Respondent advised the court that it was preparing a plan that would, among other things:
 - (a) Preserve and maximize the value of the assets for the benefit of all the creditors and potential creditors;

- (b) Allow for the orderly distribution of the funds which would be available to any claimant or a creditor entitled to a claim or a compensation; and
 - (c) Devise a simpler, less costly, more effective and more rapid process to deal with all of the claims or potential claims than legal proceedings in Canada and the U.S. the multiplicity of which may only contribute to the erosion of the value of the various assets and insurance indemnities;
20. Similarly, in its most recent motion on October 4, 2013 seeking an extension of the stay of proceedings granted by the Initial Order, the Debtor Company-Respondent advised the court that it was continuing to develop and establish “a formal and orderly claims process ... to deal efficiently with the claims of all stakeholders including the victims of the Derailment and their families”;
 21. At this time, the Class Action Petitioners estimate that the damages suffered by the Class Members as a result of the Train Derailment are at least \$150 million, and may be significantly greater;
 22. By virtue of their interests in these proceedings, the Class Action Petitioners and the other Class Members have been described by this Honourable Court as “Extraordinary Creditors”. Without diminishing the significance of this characterization, it is certainly the case that the Class Members’ claims against the Debtor Company-Respondent far exceed the ordinary unsecured liquidated claims, which are said to total approximately \$48 million;

VI. THE PREJUDICE TO CLASS MEMBERS IF THEY REMAIN UNREPRESENTED

23. As such, Class Members have a very significant economic interest, and in many ways, the most significant interest, in these proceedings. It is essential therefore that their interests be formally represented before this Honourable Court and that they have a meaningful voice in the negotiation and determination of any action or process in these CCAA proceedings that may affect creditor recoveries (such as any sale or other strategy for the realization of value out of the Debtor Company-Respondent’s assets, the development and implementation of any claims reconciliation process, and any plan of arrangement addressing some or all of their claims), and in connection to any vote on a formal plan of arrangement;
24. At the same time, the Class Members are part of a large group with diverse claims for economic damages and many are unsophisticated with respect to legal matters. Most have had little or no exposure to legal proceedings at all, let alone cross-border insolvency proceedings of the present complexity. Without adequate representation in these CCAA proceedings, the reality is that Class Members are individually poorly positioned to understand, much less advocate for and advance their interests in these proceedings.
25. The proposed Representation Order will serve to:

- (a) Ensure that a large, but vulnerable group is properly represented in these proceedings;
- (b) Facilitate the dissemination of information to Class Members, and provide them with a point of contact to address their questions and concerns related to these proceeding for dealing effectively with issues affecting Class Members' interests;
- (d) Provide an effective voice during the negotiation process, to facilitate the administration of the proceedings; and
- (e) Increase efficiency and avoid a multiplicity of legal retainers;

VII. THE ROLE OF THE CLASS REPRESENTATIVES IN NEGOTIATING WITH OTHER STAKEHOLDERS AND WITH XL INSURANCE

- 26. As a condition of being permitted to continue rail operations within the province of Québec, MMA Canada was required to have an insurance policy with respect to liability to third parties. That policy of insurance is with XL Insurance and has a principal amount of \$25 million plus additional coverage for defence and other costs incurred by the insured party. These finds do not form part of the estate of MMA Canada but are available to pay claims such as those of the Class Members;
- 27. It is in the interests of the all Class Members to have CCAA representatives appointed on their behalf in order to instruct counsel with respect to negotiations conducted on their behalf as expeditiously as possible, regarding the possible release and distribution of the proceeds of the XL Insurance policy. Class counsel initiated preliminary negotiations with various potential claimants, including the Province of Quebec, and commercial claimants on behalf of the Class Members in the context of the class action. However, it is imperative that these negotiations also occur within the context of the CCAA proceedings and with other CCAA stakeholders. Negotiations also need to respect the cross-border aspect of the case and will need to be appropriately coordinated with the Chapter 11 proceedings in Portland, Maine;
- 28. It is of great interest to Class Members that a Representation Order be granted to the Class Action Petitioners in the CCAA proceedings which would serve to enable meaningful negotiations with the various stakeholders regarding prompt access to these insurance proceeds for the victims. Currently there is no counsel authorized in the CCAA proceedings to negotiate on the behalf of the Class Members who comprise a group of several thousand victims. A Representation Order would make the current representation by class counsel far more effective;
- 29. The most recent report by the Monitor to the Court has indicated that the Monitor anticipates a sale of the assets of both the Canadian and American operating railroads which are jointly under bankruptcy protection in the Federal Court in United States and under the Québec Superior Court. The Monitor is proposing to distribute any assets, after the claims of secured creditors, to unsecured creditors

and claimants through a claims administration process. However no consideration has yet been given as to how the administration process would serve the needs of the several thousand victims in Lac-Mégantic who have significant claims in the CCAA process. If a Representation Order is made appointing the proposed Class representatives as representatives for the CCAA process, they would be able to effectively represent the interests of all victims. Class counsel could better assist victims in the claims process rather than requiring a multitude of victims to obtain their own independent legal advice. It would be far more efficient, practical and fair to individual victims if they were represented in this process by Class counsel;

VIII. QUALIFICATIONS OF THE PROPOSED REPRESENTATIVES

30. Petitioner Ouellet

- (a) Petitioner Ouellet resides at 4282 Rue Mauger, Lac-Mégantic, Quebec;
- (b) Petitioner Ouellet suffered many grave losses due to the Train Derailment including, but not limited to the death of his partner, Diane Bizier. They had been in a serious relationship for five (5) years;
- (c) Petitioner Ouellet's place of work, a factory, was closed for 3 days following the Train Derailment, which resulted in the loss of many hours of work and income;
- (d) Furthermore, Petitioner Ouellet took a work leave for one week due to overwhelming stress, anxiety and sadness;
- (e) As a result of the death of his partner, Petitioner Ouellet also suffered a loss of support, companionship and consortium;
- (f) Petitioner Ouellet's damages are a direct and proximate result of the Respondent's conduct (in addition to other parties as elaborated upon in the Motion to Authorize);
- (g) In consequence of the foregoing, Petitioner Ouellet is justified in claiming damages;

31. Petitioner Gagné

- (a) Petitioner Gagné resides at 4722 Rue Papineau in Lac-Mégantic, Quebec;
- (b) Petitioner Gagné owns and operates a restaurant and small concert venue, Musi-Café, located at 5078, Rue Frontenac in Lac-Mégantic, Quebec;
- (c) Petitioner Gagné was working at Musi-Café the night of the Train Derailment. He and his partner, who was seven (7) months pregnant at

the time, left the establishment merely 15-30 minutes before the Train Derailment;

- (d) As a result of the Train Derailment, Petitioner Gagné suffered many damages, including, but not limited to: the loss of his business and his place of work, the loss of three (3) employees who perished in the tragedy, the loss of twelve (12) employees who are currently unemployed and the investments made over the last two (2) years in the renovation of Musi-Café;
- (e) After tragedy struck, Petitioner Gagné also suffered from a great deal of sadness, anguish, stress and melancholy;
- (f) Petitioner Gagné will have to completely rebuild his life, including taking all the administrative measures to revive his business, if possible. As a result of the damage done to his place of business and livelihood, he anticipates many financial problems in his future;
- (g) Petitioner Gagné has also suffered loss of time, inconvenience and stress due to disorganization and disorientation following the events of July 6, 2013;
- (h) Petitioner Gagné's damages are a direct and proximate result of the Respondent's conduct (in addition to other parties as elaborated upon in the Motion to Authorize);
- (i) In consequence of the foregoing, Petitioner Gagné is justified in claiming damages;

32. **Petitioner Jacques**

- (a) Petitioner Jacques previously resided at 5142, Boulevard des Vétérans, Lac-Mégantic, Quebec which was situated across from the Parc des Vétérans in Lac-Mégantic;
- (b) Petitioner Jacques and his wife escaped from their house mere minutes before a storm sewer full of gasoline exploded in their yard, destroying both his home and his business;
- (c) Had Petitioner Jacques and his wife not escaped when they did, they would have been killed in their home as happened to many of their neighbours;
- (d) Petitioner Jacques' home was a mansion of tremendous historic, cultural and personal value, in addition to its significant commercial real estate value and is irreplaceable;
- (e) Petitioner Jacques' home was also his place of business;

- (f) As a result of the Train Derailment, Petitioner Jacques suffered many damages, including, but not limited to: the loss of his home, the loss of his business establishment, the loss of his furniture and the loss of all personal and business effects which were destroyed when his home exploded;
- (g) Petitioner Jacques also suffered from significant emotional harm as a result of the tragedy, including the loss of many friends and neighbours and a loss of his sense of security;
- (h) Petitioner Jacques' damages are a direct and proximate result of the Respondent's conduct (in addition to other parties as elaborated upon in the Motion to Authorize);
- (i) In consequence of the foregoing, Petitioner Jacques is justified in claiming damages;

33. **Petitioner Parent**

- (a) Petitioner Parent used to reside at 5060 Boulevard des Vétérans in Lac-Mégantic, Quebec;
- (b) The night of the Train Derailment, Petitioner Parent and his wife were able to escape from the explosions and fire to the safety of their vehicle; however, his home, place of business, furniture and personal effects were all completely destroyed in the Train Derailment and subsequent explosions and fire, as firefighters had to demolish his home to prevent the fire from spreading;
- (c) Petitioner Parent's home was also his place of business;
- (d) As a result of the Train Derailment, Petitioner Parent suffered significant damages, including the loss of his home and personal effects, the loss of his business and his place of work, and related economic losses;
- (e) Petitioner Jacques also suffered from significant emotional harm as a result of the tragedy, including the loss of many friends and neighbours and a loss of his sense of security;
- (f) Petitioner Parent's damages are a direct and proximate result of the Respondent's conduct (in addition to other parties as elaborated upon in the Motion to Authorize);
- (g) In consequence of the foregoing, Petitioner Parent is justified in claiming damages;

34. The Class Action Petitioners are all suitable Representatives of the Class;

35. Class Action Petitioners are ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class and to collaborate with their attorneys;
36. The Class Action Petitioners have the capacity and interest to fairly and adequately protect and represent the interests of the members of the Class;
37. The Class Action Petitioners have given the mandate to their counsel to obtain all relevant information with respect to the present action and intend to keep informed of all developments;
38. The Class Action Petitioners, with the assistance of their counsel, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
39. The Class Action Petitioners are acting in good faith and have instituted this action for the sole goal of having their rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;
40. The Class Action Petitioners understand the nature of the action;
41. Petitioners' interests are not antagonistic to those of other members of the Class;
42. To assist them in carrying out the mandate that they seek in these proceedings, the Class Action Petitioners have made arrangements to retain counsel experienced in both class action litigation and insolvency proceedings, namely: *Daniel Larochelle, Consumer Law Group Inc., Rochon Genova LLP, Lieff Cabraser Heimann and Bernstein LLP* and insolvency counsel at *Paliare Roland Rosenberg Rothstein LLP* ("*Paliare Roland*"):
 - (a) Daniel Larochelle, a local lawyer in Lac-Mégantic experienced in commercial and personal injury litigation;
 - (b) *Consumer Law Group Inc.* has experience in all areas of class action litigation and mass tort litigation;
 - (c) *Rochon Genova LLP*, based in Toronto has significant experience in complex class action litigation, has acted as lead, or co-lead counsel in several of the largest class proceedings in Canada. They also have experience representing parties in significant bankruptcy proceedings, including the Nortel and Stelco CCAA proceedings;
 - (d) *Lieff Cabraser Heimann and Bernstein LLP* is one of the most experienced and highly regarded petitioner class action and mass tort firms in the U.S.

They acted as co-lead counsel in the Deep Water Horizon/BP Oil spill case;

- (e) *Paliare Roland* has significant experience representing groups in complex insolvency matters. Among others, *Paliare Roland* has acted as insolvency counsel to: class action plaintiffs in CCAA proceedings commenced by Sino-Forest Corporation and by Poseidon Concepts Corporation, as well as counsel to various unions in the CCAA proceedings commenced by of *Air Canada, Algoma, Collins & Aikman* and *Slater Steel*;

IX. CONCLUSION

43. The relief being sought is in keeping with the CCAA's objective of facilitating an orderly negotiation of a compromise or an arrangement between the Debtor Company-Respondent and its creditors, including the Class Members, in the face of the tragic results of the Train Derailment;
44. The present motion is well founded in fact and in law.

FOR THESE REASONS THE PETITIONERS ASK THAT THIS HONOURABLE COURT:

GRANT the Class Action Petitioners' motion appointing them as representatives of the Class Members in these CCAA proceedings, including, without limitation, for the purpose of proving, settling or compromising claims by the Class Members in the Insolvency Proceedings, with the proviso that any individual Class Member who does not wish to be represented by the Class Action Petitioners and bound by their subsequent actions shall, within 30 days of publication of Class Action Petitioners' appointment as contemplated below, so notify the Monitor, in writing, by facsimile, mail or delivery, substantially in the form attached hereto as Appendix B, and thereafter they shall not be represented by the Class Action Petitioners in these proceedings and shall represent themselves, personally or through counsel, as an independent, individual party to the extent that they wish to participate in these proceedings;

APPROVE the Class Action Petitioners' engagement of Daniel Larochelle, Consumer Law Group Inc., Rochon Genova and Paliare Roland Rosenberg Rothstein LLP as counsel to them in their capacity as representatives for the Class Members in these CCAA proceedings, subject to this Honourable Court's ongoing supervisory jurisdiction over the fees and disbursements to be paid to counsel whether as part of these proceedings or in the Class Action;

DIRECT that notice of the granting of this Order be provided to the Class Members by advertisement in LA PRESSE (national edition), LA TRIBUNE and L'ÉCHO DE FRONTENAC, at the expense of the Debtor Company-Respondent, and under such other terms and conditions as to be agreed upon by the Class Action Petitioners, the Debtor Company-Respondent and the Monitor;

AUTHORIZE the Class Action Petitioners, or their counsel on their behalf, to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto;

AUTHORIZE the Class Action Petitioners to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties;

DECLARE that service and notice of this motion was good and sufficient;

THE WHOLE without costs, unless contested.

Lac-Mégantic, November 1, 2013

(S) Daniel E. Larochelle

ME DANIEL E. LAROCHELLE
Attorney for the Petitioners

Montréal, November 1, 2013

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioners

APPENDIX “A”

DEFINITION OF CLASS MEMBERS

“All persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the “Train Derailment”), or any other group to be determined by the Court”

APPENDIX B

NOTICE TO OPT-OUT OF REPRESENTATION IN CCAA PROCEEDINGS

Richter Advisory Group Inc.
1981 McGill College
Montreal, Quebec
H3A 0G6

Attention: ●

Telephone: 514.934.3400
Fax: 514.934.3408
Email: ●

Re: Notice to Opt-Out of Representation in the Matter of Montreal Maine & Atlantic Canada Co.—CCAA (the “CCAA Proceedings”)

I, _____, am a Class Member, as defined in the Representation Order of Mr. Justice Dumas J.S.C. dated ● (the “Order”).

The Order directs that Class Members who do not wish to be represented in the CCAA Proceedings by the Class Action Petitioners and bound by their actions may opt out by delivering this letter in accordance with the terms of the Order.

I hereby notify the Monitor that I do not wish to be represented by the Class Action Petitioners and bound by their action and I will be separately represented to the extent that I wish to appear in the CCAA Proceedings.

DATE

NAME

N°: 450-11-000167-134

**SUPERIOR COURT
(Commercial Division)
DISTRICT OF SAINT-FRANÇOIS**

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-and-

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-and-

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**MOTION FOR AN ORDER APPOINTING THE
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(Section 11 of the *Companies’ Creditors
Arrangement Act*, R.S.C. 1985, c. C-36 (“CCAA”))**

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